

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARK GARNES,

Plaintiff,

-against-

PRITCHARD INDUSTRIES, INC.,

Defendant.

20-CV-3843 (CM)

ORDER

COLLEEN McMAHON, United States District Judge:

Plaintiff filed this action *pro se*. By order dated May 19, 2020, the Court directed Plaintiff, within thirty days, to either pay the \$400.00 in filing fees or submit an application requesting leave to proceed *in forma pauperis* (IFP), that is, without prepaying the filing fee. On June 23, 2020, the Court dismissed the complaint because it had not received any response to the order May 19, 2020 order, and the time to respond had expired.

The Clerk of Court received Plaintiff's IFP application on June 23, 2020, but it was not entered on the docket until the June 24, 2020, after the action was closed. Plaintiff then filed an amended complaint (totaling nearly 300 pages) in the closed action. (ECF No. 7.) He also filed a motion for reconsideration of the order of dismissal. (ECF No. 8).¹

The Court liberally construes this submission (ECF No. 8) as a motion under Fed. R. Civ. P. 59(e) to alter or amend judgment and a motion under Local Civil Rule 6.3 for reconsideration, and, in the alternative, as a motion under Fed. R. Civ. P. 60(b) for relief from a judgment or order.

¹ Plaintiff also filed an application to withdraw the motion for reconsideration but indicates that he does so in order to provide "Plaintiff the opportunity to proceed without prejudice." (ECF No. 9). It therefore appears that Plaintiff does continue to seek reconsideration of the order of dismissal.

Plaintiff demonstrates good cause for failing to file the IFP application within the deadline for doing so. But upon review of Plaintiff's IFP application, Plaintiff fails to show that he is unable to afford the cost of suit. Plaintiff indicates that he is currently employed earning approximately \$52,320.00 annually and has \$1200 in a checking account. (ECF No. 4). Plaintiff's IFP application must therefore be denied.

If Plaintiff wishes to proceed with this action, he must, within thirty days, either (1) submit an amended IFP application giving further details that show that he is unable to pay the \$400.00² filing fee, *see* 28 U.S.C. § 1915(a)(1); or (2) pay the \$400.00 filing fee for this action. Upon receipt within the thirty day deadline of either the \$400.00 filing fee, or Plaintiff's amended IFP application showing that he is unable to pay the filing fees, the Court will reopen this action.

CONCLUSION

Accordingly, Plaintiff's motion for reconsideration (ECF No. 8) is denied. Although Plaintiff shows good cause for failing to timely submit the IFP application, he fails to show that he is unable to afford the cost of suit and is entitled to proceed IFP.

If the Court receives, within thirty days of this order, either the \$400.00 in filing fees, or Plaintiff's amended IFP application showing that he is unable to pay the filing fees, the Court will reopen this action. An amended IFP Application is attached to this order. If Plaintiff submits an amended IFP application, it should be labeled with docket number 20-CV-3843 (CM). No summons shall issue at this time, and the action remains closed.

² Effective December 1, 2020, the administrative fee increased from \$50.00 to \$52.00, bringing the total filing fee to \$402.00. Because this action was filed before the effective date of the fee increase, the \$400.00 fee applies.

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: February 10, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Colleen McMahon", is written over a horizontal line.

COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(Full name(s) of the plaintiff or petitioner applying (each person must submit a separate application))

-against-

____ CV _____ () ()

(Enter case number and initials of assigned judges, if available; if filing this with your complaint, you will not yet have a case number or assigned judges.)

(Full name(s) of the defendant(s)/respondent(s).)

APPLICATION TO PROCEED WITHOUT PREPAYING FEES OR COSTS

I am a plaintiff/petitioner in this case and declare that I am unable to pay the costs of these proceedings and I believe that I am entitled to the relief requested in this action. In support of this application to proceed *in forma pauperis* ("IFP") (without prepaying fees or costs), I declare that the responses below are true:

1. Are you incarcerated? ☐ Yes ☐ No (If "No," go to Question 2.)

I am being held at: _____

Do you receive any payment from this institution? ☐ Yes ☐ No

Monthly amount: _____

If I am a prisoner, *see* 28 U.S.C. § 1915(h), I have attached to this document a "Prisoner Authorization" directing the facility where I am incarcerated to deduct the filing fee from my account in installments and to send to the Court certified copies of my account statements for the past six months. *See* 28 U.S.C. § 1915(a)(2), (b). I understand that this means that I will be required to pay the full filing fee.

2. Are you presently employed? ☐ Yes ☐ No

If "yes," my employer's name and address are: _____

Gross monthly pay or wages: _____

If "no," what was your last date of employment? _____

Gross monthly wages at the time: _____

3. In addition to your income stated above (which you should not repeat here), have you or anyone else living at the same residence as you received more than \$200 in the past 12 months from any of the following sources? Check all that apply.

(a) Business, profession, or other self-employment	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
(b) Rent payments, interest, or dividends	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

- | | | |
|---|------------------------------|-----------------------------|
| (c) Pension, annuity, or life insurance payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (d) Disability or worker's compensation payments | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (e) Gifts or inheritances | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (f) Any other public benefits (unemployment, social security, food stamps, veteran's, etc.) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (g) Any other sources | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

If you answered "Yes" to any question above, describe below or on separate pages each source of money and state the amount that you received and what you expect to receive in the future.

If you answered "No" to all of the questions above, explain how you are paying your expenses:

4. How much money do you have in cash or in a checking, savings, or inmate account?

5. Do you own any automobile, real estate, stock, bond, security, trust, jewelry, art work, or other financial instrument or thing of value, including any item of value held in someone else's name? If so, describe the property and its approximate value:

6. Do you have any housing, transportation, utilities, or loan payments, or other regular monthly expenses? If so, describe and provide the amount of the monthly expense:

7. List all people who are dependent on you for support, your relationship with each person, and how much you contribute to their support (only provide initials for minors under 18):

8. Do you have any debts or financial obligations not described above? If so, describe the amounts owed and to whom they are payable:

Declaration: I declare under penalty of perjury that the above information is true. I understand that a false statement may result in a dismissal of my claims.

_____		_____	
Dated		Signature	
_____		_____	
Name (Last, First, MI)		Prison Identification # (if incarcerated)	
_____		_____	
Address	City	State	Zip Code
_____		_____	
Telephone Number		E-mail Address (if available)	